

Presentation to
Committee on Consumer Protection and Commerce
February 6, 2013 at 2:30pm
State Capitol Conference Room 325

Testimony in OPPOSITION to H. B. 21

TO: The Honorable Angus L. K. McKelvey, Chair
The Honorable Derek S. K. Kawakami, Vice Chair
Members of the Committee

My name is Neal Okabayashi and I represent the Hawaii Bankers Association, a trade association of local FDIC insured banks.

We oppose HB 21 because it hurts the Hawaii mortgage market to the detriment of local lenders, condominium owners, and condo buyers, especially first time home buyers. While it might be tempting for association of apartment owners to support this bill on the theory that they will be paid in full, there are other alternatives to reaching that goal without endangering the condominium market, which ultimately will be to the detriment of condominium owners.

Hawaii law provides that associations of apartment owners enjoy a “super lien” on mortgaged property second only to the lien of the county for real property taxes and before the lien of the first mortgage, subject only to capping the super lien’s amount to a statutory amount. Hawaii’s law has evolved over a short period of time where the amount of the super lien has grown from \$1,800, to \$3,600, to \$7,200 and now to an unlimited amount capped only by the statutory requirement that the amount is six months of monthly assessments.

Given that lenders are now required to potentially undertake a time-consuming foreclosure process, the amount of the super lien could be rather high since a foreclosure can take as long as 18 months or even longer. On the other hand, associations have no major impediment to an expedient foreclosure as associations are exempt from the nonjudicial foreclosure dispute resolution process. Thus, associations are able to complete a foreclosure process quickly, possibly within six months, and if associations follow their general practice, they will buy the unit for \$1.00 subject to the first mortgage and then rent the unit. In fact, if this bill were to become law, there is little incentive for an association to act prudently knowing that eventually the entirety of the delinquent assessments will be paid.

If this bill were to become law, then lenders would have to be extremely careful on condominium loans to avoid being junior to a large lien. Thus it will be more difficult to qualify for a condominium loan. Lenders may also reduce the amount of the condominium loan, which means the borrower will need to make a larger down payment. This impacts the young first time

home buyer, whose first purchase is likely to be a condominium, and the greatest hurdle for the first time home buyer's purchase is the down payment. Thus, adoption of this bill will lead to tighter credit availability which means a decrease in the market price of condominiums and tighter credit availability. This does not help a current owner who wishes to sell his or her unit and it will also hurt a person attempting to buy a condominium unit.

More importantly, Fannie Mae will not buy a loan if the super lien is greater than six months. Since this bill extends the super lien for an indefinite time, Hawaii will have priced itself out of the Fannie Mae mortgage market. Given Fannie Mae's huge presence in the mortgage market, passage of this bill will severely impact the Hawaii mortgage market.

It is ironic that passage of this bill would make passage of HB 25 useless for associations because the purpose of HB 25 was to permit junior lienholders to proceed with a nonjudicial foreclosure until a foreclosure commissioner was appointed. Passage of this bill would make associations ineligible to use HB 25 as they would no longer be a junior lienholder. HB 25 also indicates the relative ease for associations to finish a foreclosure compared to a first mortgagee.

The Hawaii Bankers Association has also been in discussions with a condominium advocate to clarify state law on distribution of rental proceeds. The discussion centered on language contained in SB 1454, SD 1, 2011 session, which did not pass. The essence of that bill provided that when the association took title and rented the unit, after payment in full to the association, the excess rental proceeds would be paid to the other lienors, including the first mortgagee. Amending HB 21 in this manner would seem to be the most appropriate way to achieve the association's goals without damaging the mortgage market.

I would be happy to answer any questions you or the committee may have as well as provide the language for the amendment regarding the concept we suggest on allocation of rental proceeds.

Neal Okabayashi
(808) 525-5785

HAWAII FINANCIAL SERVICES ASSOCIATION

c/o Marvin S.C. Dang, Attorney-at-Law

P.O. Box 4109

Honolulu, Hawaii 96812-4109

Telephone No.: (808) 521-8521

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February 6, 2013

Rep. Angus L.K. McKelvey, Chair
and members of the House Committee on Consumer Protection & Commerce
Hawaii State Capitol
Honolulu, Hawaii 96813

Re: **House Bill 21 (Condominiums)**
Hearing Date/Time: Wednesday, February 6, 2013, 2:30 p.m.

I am Marvin Dang, the attorney for the **Hawaii Financial Services Association** ("HFSA"). The HFSA is a trade association for Hawaii's consumer credit industry. Its members include Hawaii financial services loan companies (which make mortgage loans and other loans, and which are regulated by the Hawaii Commissioner of Financial Institutions), mortgage lenders, and financial institutions.


The HFSA **opposes** this Bill.

The purposes of this Bill are to: (1) repeal the prioritization of liens for unpaid mortgages over subsequently recorded liens for unpaid condominium association fees, and (2) clarify the obligations of the acquirer of a foreclosed unit under the lien for unpaid association fees.

During the past 2 years, the law regarding lien priority of condominium association fees has been changing annually. Just last year, the lien priority was 6 months and there was no dollar cap under Act 182. Before that, under Act 48 in 2011, the lien priority was 12 months and the cap was \$7,200.00. Prior to that, the lien priority was 6 months with a cap of \$3,600.00.

If this Bill passes, this would be the third year of change. These changes do not provide needed predictability for mortgage lenders considering making loans on condominium units.

Thank you for considering our testimony.



MARVIN S.C. DANG
Attorney for Hawaii Financial Services Association

(MSCD/hfsa)

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Cc: Jdouponce@plantation-hale.com
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HB21

Submitted on: 2/4/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
John Douponce	Plantation Hale Suites	Support	No

Comments: I am writing to bring to your attention to a serious flaw in Hawaii law that is causing unfairness and hardship to condominium owners throughout the state. HRS 514B-146 should be amended to provide that liens for unpaid condominium association dues are secured by the delinquent owner's unit, regardless of whether the property is subject to a mortgage in foreclosure. Please make banks take responsibility for their financial actions, including paying the fees that everyone else has to pay, and stop giving them special treatment. Please allow Representative Evans bill HB-21 to come before the legislature.

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Cc: rick@olshotels.com
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Attachments: In support of HB21.doc

HB21

Submitted on: 2/4/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Rick Ball	AOAO Banyan Harbor- Managing Agent	Support	No

Comments: Comments: I am writing to bring to your attention to a serious flaw in Hawaii law that is causing unfairness and hardship to condominium owners throughout the state. HRS 514B-146 should be amended to provide that liens for unpaid condominium association dues are secured by the delinquent owner's unit, regardless of whether the property is subject to a mortgage in foreclosure. Please make banks take responsibility for their financial actions, including paying the fees that everyone else has to pay, and stop giving them special treatment. Please allow Representative Evans bill HB-21 to come before the legislature.

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3411 Wilcox Road
Lihue, Kauai, Hi. 96766
Managed by OLS Hotels & Resorts

February 4, 2013

OFFICIAL NOTICE-

Re: HB21

Submitted on: 2/4/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Lyle M. Otsuka	Banyan Harbor	Support	No

Comments: Banyan Harbor is a Condo association on Kauai. There is a serious flaw in Hawaii law that causes unfairness and hardship to condominium owners throughout the state. HRS 514B-146 should be amended to provide that liens for unpaid condominium association dues are secured by the delinquent owner's unit, regardless of whether the property is subject to a mortgage in foreclosure. Many banks simply drag out the process amounting to thousand of dollars in uncollectable maintenance fees for associations. Please make banks take responsibility for their financial actions, including paying condo association maintenance fees that every other condo owner has to pay. Financial institutions should receive the same treatment as condo owners and be responsible for their maintenance fees. Please allow Representative Evans bill HB-21 to come before the legislature.

Sincerely,

Lyle M. Otsuka
General Manager

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From: mailinglist@capitol.hawaii.gov
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Cc: bilmarjohnson@hotmail.com
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HB21

Submitted on: 2/3/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Maria Johnson	Kaha Lani AOA	Support	No

Comments:

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Cc: alinoue@hawaiiantel.net
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HB21

Submitted on: 2/4/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Al Inoue	The Hilo Lagoon Centre AOAO	Support	No

Comments: Ladies and Gentlemen: I am the Property Manager of the Hilo Lagoon Centre in Hilo. We are owed approximately \$200,00 in uncollected common area maintenance fees (CAM) from banks and mortgagors foreclosed apartments. Eventually, these fee will have to be collected from the other apartment owners, many of whom are on fixed incomes. Historically, the mortgagors and bank have been extremely slow in processing foreclosures, in some cases, over two years. We need to correct this problem. Thank you for your consideration. Al Inoue Property Manager

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Cc: mike.reid.hawaii@gmail.com
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Attachments: HB21.docx

HB21

Submitted on: 2/4/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Reid	Plantation Hale AOA	Support	No

Comments: I am writing to bring to your attention to a serious flaw in Hawaii law that is causing unfairness and hardship to condominium owners throughout the state. HRS 514B-146 should be amended to provide that liens for unpaid condominium association dues are secured by the delinquent owner's unit, regardless of whether the property is subject to a mortgage in foreclosure. Please make banks take responsibility for their financial actions, including paying the fees that everyone else has to pay, and stop giving them special treatment. Please allow Representative Evans bill HB-21 to come before the legislature.

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HB21

Submitted on: 2/4/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
August Enderlin	Banyan Harbor Condominiums	Support	No

Comments: I am writing to bring to your attention a serious flaw in the Hawaii law that is causing unfairness and hardship throughout the state. HRS 514B-146 should be amended to provide that liens for unpaid condominium association dues are secured by the delinquent owner's unit, regardless of whether the property is subject to a mortgage in foreclosure. Please make Banks take responsibility for their financial actions, including paying the fees everyone else has to pay, and stop giving them special treatment. Please allow Representative Evans bill HB-21 to come before the legislature.

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HB21

Submitted on: 2/5/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Jill Briley	Banyan Harbor AOA	Support	No

Comments: As a board member of the Banyan Harbor Condominium Association on Kauai, I am deeply concerned about HRS 514B-146, which contains a very serious flaw in the Hawaiian law causing undue hardship and unfairness to condominium owners state wide. Therefore, please consider this testimony in support of amending HRS 514B-146 to provide that liens for unpaid condominium association dues are secured by the delinquent owner's unit, regardless of the property's status. A property in foreclosure is afforded the same rewards as a property in good standing and each should be liable for equally sharing in the expense of maintaining the common areas of which they are a part. As a board member, I find it extremely difficult to justify asking owners to pay higher fees because the bank foreclosing the mortgage next door to them is exempt from paying for the same services. Our maintenance staff performs the same duties for each unit, thereby maintaining the value of the property on which the bank forecloses, yet the expense is passed on to owners who have paid their mortgages as well as their maintenance fees. It is time to stop the unfair burden placed on owners because of special treatment given to banks. Please force the banks to take responsibility for their financial actions by allowing Representative Evans bill HB-21 to come before the legislature. Thank you for including my testimony on this very important issue affecting all condominium owners.

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Honorable Representatives:

I am submitting testimony in SUPPORT of HB 21.

As a member of the Board of Directors of Kaha Lani AOA, I am witnessing firsthand the adverse effects the mortgage foreclosure crisis has had (and IS having) on our owners.

As you are aware, when a bank forecloses on a unit they have no responsibility in paying maintenance fees associated with the foreclosed unit. With no liability to the bank, they do not seem eager to sell the unit either. We have had at least 2 units where offers were made to buy a unit, and the buyer did not get a response for over a year. Presently, one buyer is still waiting to hear from the bank on an offer that was made in October 2011!

At this time we are looking at about \$100,000 in unpaid maintenance fees on foreclosed units, which will have to be collected by owners who actually DO pay their maintenance fees, either by increasing fees or by Special Assessment. Really now, have can anyone think that is an equitable situation!

I would appreciate your support of HB21.

Respectfully submitted,

Jean Lambert, Secretary, Kaha Lani AOA

**TESTIMONY OF NICHOLAS BLONDER
IN SUPPORT OF HOUSE BILL 21,
RELATING TO CONDOMINIUMS**

TO: House Committee on Consumer Protection & Commerce

Chair: Hon. Angus L. K. McKelvey
Vice-Chair: Hon. Derek S. K. Kawakami

Hearing Date: February 6, 2013

Introduction

Hawaii's condominium associations (HOAs) are caught in a legal limbo that prevents them from collecting delinquent maintenance fees when a unit becomes "underwater" and is foreclosed by a mortgage holder. HB 21 will level the playing field by amending HRS 514B-146 to eliminate the mortgage holders' unwarranted priority over HOA liens.

This testimony is intended to reflect my views as an individual condominium owner and as a member of the board of directors of the Kaha Lani AOA, 4460 Nehe Road, Lihue, Kauai, HI 96766.

Background

HB 21 is intended to address a direct consequence of the "Great Recession," which began in 2008. Before the recent economic downturn, foreclosures of condominium loans were rare. A default was usually due to temporary adverse circumstances intrinsic to an individual owner (e.g., loss of employment). Existing law has always given HOAs a basic lien right to secure payment of assessments, but it was seldom necessary to actually foreclose a lien .

In most cases the property had equity, so the owner had an incentive to cure the default. If the financial adversity was quickly remedied, the loan

would be reinstated. If the problem was intractable, the property would be sold, enabling the owner to preserve most of his or her equity.

When the real estate bubble burst there was a steep drop--often as much as 50%--in residential property values. A property owner is said to be “underwater” when the fair market value of their property falls below its mortgage balance. In many cases, the underwater owners have simply abandoned their property and stopped making payments. As a result, Hawaii condominiums are caught in a wave of slow-moving foreclosures.¹ Before the mortgage crisis hit, nonjudicial foreclosures might only have taken a few months. But in the post-Recession economic environment, foreclosures now can take years, during which time the HOAs are unable to collect assessment fees.²

Existing Law Unfairly Limits HOAs’ Ability to Recover Delinquent Maintenance Fees

Existing law provides that HOAs may perfect a lien for unpaid assessment fees. The heart of the present controversy is the law’s provision that HOAs’ lien rights are *subordinate* to any mortgage which was recorded before the delinquent assessment lien. The HOA may foreclose on its lien; but when the owner has no equity, this remedy would accomplish no more than to place the HOA in the shoes of the underwater owner. Under these circumstances, the HOA’s lien rights are *worthless*.

The bank’s security interest, on the other hand, is subject only to liens for taxes. No matter how long it may take for the bank to complete the

¹ The delay inherent in the foreclosure process has been increased by recent legislation limiting the availability of nonjudicial foreclosures. Support of HB 21 is not inconsistent with the foreclosure relief legislation. It is mentioned here only to explain that the HOAs’ predicament has been exacerbated by the substantial additional delay in the foreclosure process caused by the remedial legislation.

² At Kaha Lani, two units have been delinquent since February, 2009, with no resolution in sight.

foreclosure process or consent to a short sale, the HOA is precluded, by the bank's priority, from recovering from the bank any of the costs attributable to the delinquent unit's share of the property's overall maintenance costs.

The HOA may, of course, record a "special lien," which is enforceable only against the next owner of the property. This would come into play if (i) a foreclosing bank takes title to the property and sells to a new owner, or (ii) there is a short sale. In either case, the new owner is responsible for up to six months of delinquent HOA fees. This remedy is too little, too late. Even if the HOA were to eventually receive the full six months of fees (which doesn't always occur), this arbitrarily limited amount often will not come close to covering the HOA's aggregate loss, which likely will represent several years' worth of unpaid maintenance fees.

The unfairness to the HOA is self-evident: the mortgage holder receives the full benefit of the HOA's continuing maintenance of the common elements, without having responsibility for the corresponding costs.³ The condominium lien law must be amended to take into account the new landscape of the real estate market. HB 21 accomplishes a reasonable adjustment of the stakeholders' interests.

The Law Should Reflect the True Nature of the HOAs' and the Banks' Respective Interests

HOAs Perform Functions Similar to Those of Public Agencies

The HOA maintains the property's common elements (building exteriors, landscaping, parking lots, recreational amenities, etc.). In this respect, the HOA's role is analogous to that of local government, which

³ Existing law states that the loss caused by a default in assessment fee payments shall be borne by the non-defaulting owners. This provision may have made sense when foreclosures were rare; but it likely was not intended to require the performing owners to absorb the substantial shortfall caused by the banks' ability to ignore these costs for years, while at the same time receiving the full benefit of the HOA maintenance of the banks' security. It may reasonably be inferred that the six-month recovery period of the "special lien" was originally intended to correspond roughly with the *duration of a pre-2008 foreclosure*.

maintains public buildings, streets, parks, fields, schools and libraries, and public safety institutions such as fire protection and police.⁴

In order to preserve local governments' ability to fund its necessary functions, the law provides that liens for property taxes and related fees have priority over virtually all other encumbrances, *including mortgages*. The HOAs' maintenance fees are analogous to property taxes and therefore should similarly have priority over mortgages, regardless of when the mortgage was recorded.⁵

Banks Are de facto Owners

The modern mortgage is a virtual partnership between the lender-bank and the borrower-buyer. The bank usually provides the bulk of the funds necessary to close the buyer's purchase. The buyer is equitable owner of the unit, and the bank receives legal title as security for repayment of the loan.

After a unit becomes underwater, the bank will have *substantial control* of the property. It can only be sold through a short sale, which requires the consent of the mortgagee bank. However, under existing law, the bank has no responsibility to pay the HOA fees accruing during the pendency of the foreclosure. And, as explained above, the defaulting owner has little practical incentive to keep the HOA dues current.

If a bank were to complete a foreclosure and become fee owner of a unit, HOA fees likely would be its largest recurring expense of ownership. It has been suggested by some observers that, under these circumstances, banks are "slow walking" the foreclosure process to avoid responsibility for HOA fees while waiting for market conditions to improve.

⁴ An appellate court recently observed: "Courts have recognized a homeowners association functions as a quasi-governmental entity, paralleling the powers and duties of a municipal government." (*Silk v. Feldman*, 208 Cal.App.4th 547, 553 (2012).)

⁵ It is commonly known that virtually all condominium units are subject to a monthly assessment which enables the HOA to maintain the property's common elements. The condominium project's founding documents, which are in the public record, normally contain CCRs that include the unit owners' responsibility to pay the assessment fees. It may be reasonably assumed that all institutional lenders are fully aware of their borrowers' ongoing liability *before* closing escrow on a new loan.

From the HOA's viewpoint, however, this is not a two-way street. The bank can ignore the fees which are legally chargeable only against the departed owner-mortgagor.⁶ But the HOA is obligated to continue to maintain *all* of the common elements.⁷

It is acknowledged that a mortgage holder is not the fee owner and, therefore, should not have *personal liability* for fees which accrue during the foreclosure period.. For this reason, HB 21 only treats the property as *security* for HOA fees. This equitable result is achieved by deleting the banks' priority over HOA liens for delinquent fees.

Moral Hazard

At some point the HOA likely will have to either (i) increase its monthly fees or (ii) impose multiple special assessments on the non-delinquent owners to restore the lost revenue. These measures invoke the spectre of "moral hazard."

The owners who have been honoring their payment obligations should not have to subsidize the banks' losses. As now written and applied, HRS 514B-146 *compels* this result. A fee increase or special assessment under these circumstances amounts to a partial *bailout* of the banks. The HOA and the other owners are innocent bystanders; *they were not parties to the bad loans made by the banks*. They should not have to share or absorb *any* portion of the banks' mortgage losses. If HB 21 is not passed, the non-delinquent owners will be forced to continue bailing out the negligent banks.

⁶ The HOA could seek a civil judgment against the delinquent homeowner. However, this remedy entails substantial legal expenses to obtain a judgment which, in most cases, will not be collectible.

⁷ If a homeowner has not paid his or her property taxes, the municipal government could not withhold maintenance of the public road in front of the delinquent owner's property. The road must be maintained for the benefit of the entire community. HOAs operate under the same principle, but without the municipalities' secure source of funding.

Conclusion

Under existing law, foreclosing banks receive the full benefit of the HOAs' maintenance of the banks' security, but have no responsibility for the unit's proportionate share of the corresponding costs. The status quo is a classic case of unjust enrichment. The HOA's statutory lien rights should enable the association to be made whole. HB 21 accomplishes this by updating HRS 514B-146 to (i) reflect the post-Recession realities of the condominium market and (ii) rescind the banks' unfair priority over HOA liens for delinquent maintenance fees.

For the reasons explained above, and in the interest of fundamental fairness, I urge the enactment of HB 21.

Dated: February 1, 2013.

Respectfully submitted,

Nicholas Blonder
4460 Nehe Road, #324
Lihue, Hawaii
ngblonder@yahoo.com

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HB21

Submitted on: 2/4/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Paul Reim	Elima Lani AOA	Support	No

Comments: I am the President of the Elima Lani AOA a 216 unit AOA in Waikoloa Village on the island of Hawaii. Our Association has suffered significant financial loss over the past 4 years when banks have foreclosed on units that owed thousands of dollars in past due association fees. The inability for the AOA to collect delinquent fees puts an undo burden on the balance of the other owners. Therefore, our AOA of 216 units strongly supports HB21, giving Association liens payment priority. Thank you.

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TESTIMONY OF WAYNE CASCIO IN SUPPORT OF HB 21

TO: Consumer Protection & Commerce Committee
Chair: Rep. Angus L. K. McKelvey
Vice-Chair: Rep. Derek S. K. Kawakami

Hearing Date: February 6, 2013; Room 325 @ 2:30 p.m.

I am testifying as an owner of two condominium units and as a member of the board of directors of the Kaha Lani AOA, 4460 Nehe Road, Lihue, Kauai, HI 96766.

As Treasurer of the Kaha Lani AOA, I am responsible for reviewing the financial statements of the AOA each month, along with the monthly statements of delinquent accounts. As of November 2012, for example, five units out of 74 were delinquent, in the aggregate amount of \$92,544. As those units emerge from the foreclosure process, or if they result in a change in ownership from a “short sale,” accounting rules require the AOA to recognize the delinquent amounts as uncollectible debts. The total amount of these uncollectible debts is then allocated proportionately to the remaining maintenance-fee-paying owners, either in the form of higher monthly maintenance fees, or in the form of special, one-time assessments (typically once a year). I speak for a single AOA, but these same processes are repeated over and over again, year after year, in every condominium association in the state of Hawaii.

Higher monthly maintenance fees or special assessments are two forms of direct economic consequences to existing owners. They are not the only stakeholders who are affected, however. There are also consequences to the local real estate industry and to prospective owners because higher monthly maintenance fees or repeated special assessments decrease the attractiveness of condominium properties, putting downward pressure on property values (with related effects on property taxes). The result is that condominium properties are likely to remain unsold for longer periods of time. The result is a vicious cycle, because the longer that delinquent

properties remain on the market, the higher the ultimate cost of unpaid maintenance fees to the remaining owners who are in good standing.

There are also potential consequences to the Hawaii construction industry. As the supply of unsold condominium properties remains high or continues to grow, new construction becomes less attractive, thereby reducing the demand for construction-related skill sets. As we saw during the Great Recession, many skilled-trades people left Hawaii for lack of jobs. That phenomenon is not reflected in statewide unemployment rates, but it does reduce the supply of skilled trades workers once demand rebounds.

Finally, as owners in good standing assume higher monthly maintenance fees or special assessments to cover the debts of delinquent owners, an unknown number of them have less money for renovations to their own condominium units. Fewer renovation projects reduce the demand for local construction labor and related services. This has negative economic consequences for Hawaiian residents who make their living by providing that labor and those services.

In summary, higher monthly maintenance fees or special assessments to cover the debts of delinquent owners have a number of direct and indirect economic consequences to existing owners, to prospective owners, and to the Hawaii real estate, construction, and services industries. For all of these reasons I urge you to pass HB 21 to restore basic fairness to the overall process.

kawakami2 - Rise

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HB21

Submitted on: 2/2/2013

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Submitted By	Organization	Testifier Position	Present at Hearing
Peter Sit	Pono Kai Resort	Support	No

Comments: Aloha, On behalf of Pono Kai AOA, we strongly support HB21 and ask the State to vote yes to the Bill. If you have any questions, please call me at 808/822-9831 extension 500. Peter Sit General Manager Pono Kai Resort

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kawakami2 - Rise

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 04, 2013 10:22 AM
To: CPCtestimony
Cc: rick@olshotels.com
Subject: Submitted testimony for HB21 on Feb 6, 2013 14:30PM

HB21

Submitted on: 2/4/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Rick Ball	OLS Hotels & Resorts, Agent for AOA Plantation Hale	Support	No

Comments: Comments: I am writing to bring to your attention to a serious flaw in Hawaii law that is causing unfairness and hardship to condominium owners throughout the state. HRS 514B-146 should be amended to provide that liens for unpaid condominium association dues are secured by the delinquent owner's unit, regardless of whether the property is subject to a mortgage in foreclosure. Please make banks take responsibility for their financial actions, including paying the fees that everyone else has to pay, and stop giving them special treatment. Please allow Representative Evans bill HB-21 to come before the legislature.

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kawakami2 - Rise

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 05, 2013 11:14 AM
To: CPCtestimony
Cc: galapagos_hombre@yahoo.com
Subject: Submitted testimony for HB21 on Feb 6, 2013 14:30PM

HB21

Submitted on: 2/5/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Steve Adams	Individual	Support	No

Comments: Homeowner / apartment owner associations should not be shortchanged by banks that decide to drag their feet in completing their foreclosure actions. Homeowner / apartment owner associations should not be harmed if our legislators make non-judicial foreclosures more rare / difficult to execute or more expensive. Regardless of the merit to the challenged home owner, our legislators should not stick the HOA with the bill if they legislatively prolong the foreclosure process in an effort to give delinquent homeowners longer time to negotiate with their lean holders. Banks took a risk extending a loan in exchange for a schedule of payment with interest. The HOA should not be made an unwitting participant in that business risk. Steve Adams

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kawakami2 - Rise

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 02, 2013 9:23 AM
To: CPCtestimony
Cc: arvesen@aloha.net
Subject: Submitted testimony for HB21 on Feb 6, 2013 14:30PM

Follow Up Flag: Follow up
Flag Status: Flagged

HB21

Submitted on: 2/2/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
John Arvesern	Individual	Support	No

Comments: I am a condominium owner at Kaha Lani on Kauai. It is unfair that I have to cover the delinquent fees of some foreclosed property when the mortgage holder (bank) is able to resell the property. PLEASE pass HB21!

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kawakami2 - Rise

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 04, 2013 12:23 PM
To: CPCtestimony
Cc: andy.bisnar@century21.com
Subject: Submitted testimony for HB21 on Feb 6, 2013 14:30PM

HB21

Submitted on: 2/4/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Andy Bisnar	Individual	Support	No

Comments: In support of HB21: Comments: I am writing to bring to your attention to a serious flaw in Hawaii law that is causing unfairness and hardship to condominium owners throughout the state. HRS 514B-146 should be amended to provide that liens for unpaid condominium association dues are secured by the delinquent owner's unit, regardless of whether the property is subject to a mortgage in foreclosure. Please make banks take responsibility for their financial actions, including paying the fees that everyone else has to pay, and stop giving them special treatment. Please allow Representative Evans bill HB-21 to come before the legislature.

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kawakami2 - Rise

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 01, 2013 5:43 PM
To: CPCtestimony
Cc: spam@noblesavage.net
Subject: Submitted testimony for HB21 on Feb 6, 2013 14:30PM

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Flag Status: Flagged

HB21

Submitted on: 2/1/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Christopher Cardinal	Individual	Support	No

Comments: Dear Hawaii State Legislature, I have already lost most of my life savings by purchasing a condo in Kauai right before the financial meltdown. Almost everyone else walked away from their underwater mortgages, abandoning their responsibilities, and the banks got bailed out for the losses and are making more profit than ever. As an individual who bought something he could actually afford, I am one of the only people who has not been bailed out in one form or another. Driving down property values 50% or 70% through foreclosure sales has been bad enough, but the fact that the banks are continuing to take money from me and my fellow condo owners by shifting the burden of their AOA liens to the only people who have taken any financial responsibility in this situation is adding an injurious insult to a very substantial injury. Please make them take responsibility for their financial actions, including paying the fees that everyone else has to pay, and stop giving them special treatment as a reward for wrecking the global economy. Sincerely, Christopher Cardinal

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kawakami2 - Rise

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 04, 2013 2:41 PM
To: CPCtestimony
Cc: combsclark@aol.com
Subject: Submitted testimony for HB21 on Feb 6, 2013 14:30PM

HB21

Submitted on: 2/4/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Stephen Combs	Individual	Support	No

Comments: 2/4/2013 Honorable Representatives, Since 1991 I have been the owner of a one bedroom condominium located on the island of Kauai. The complex is comprised of 74 units, most used as secondary homes but some are full time residences. My monthly maintenance fee is \$873. Due to a deflated real estate market and personal financial reversals several units are in foreclosure. Current law allows mortgage holders to essentially avoid paying maintenance fees while enjoying the benefits of common area maintenance. The maximum amount an AOA may collect at sale of property is \$7,200. Our AOA has over \$130,000 in delinquent maintenance fees most of which will never be collected. The only solution is to assess the current ownership. My question to you is: why should a mortgage holder receive the benefit of maintaining property owned in common without paying for said maintenance. This results in unfairly transferring the financial burden to other owners. I would ask that the legislature rectify this financial injustice. Regards, S D Combs Board of Directors, Past President, AOA O Kaha Lani

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kawakami2 - Rise

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 04, 2013 4:06 PM
To: CPCtestimony
Cc: paulcrepeau@hotmail.com
Subject: Submitted testimony for HB21 on Feb 6, 2013 14:30PM

HB21

Submitted on: 2/4/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Paul Crepeau	Individual	Support	No

Comments: It is absolutely critical that banks do their part to ensure that condominium maintenance fees are kept current in foreclosed units. After all, the banks in their efforts to sell such units!

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kawakami2 - Rise

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 05, 2013 10:27 AM
To: CPCtestimony
Cc: sjillbriley@aol.com
Subject: Submitted testimony for HB21 on Feb 6, 2013 14:30PM

HB21

Submitted on: 2/5/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Jill Briley	Individual	Support	No

Comments: I am writing to add my support to amend HRS 514B-146 which contains a serious flaw in Hawaii law that is causing unfairness and hardship to condominium owners throughout the State of Hawaii. HRS 514B-146 should be amended to provide that liens for unpaid condominium association dues are secured by the delinquent owner's unit, regardless of whether the property is subject to a mortgage in foreclosure. I am being forced, as a condominium owner, to make up the insufficiencies caused by the banks failure to pay maintenance fees on those properties on which they are foreclosing even though those very properties are reaping the same benefits that I am. Maintenance of a condominium project does not cease due to a foreclosure. It is time banks take responsibility for their financial actions, including paying the fees that everyone else has to pay, and stop giving them special treatment. Please allow Representative Evans bill HB-21 to come before the legislature. Thank you for allowing my input into this very important issue which affects all condominium owners.

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kawakami2 - Rise

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 01, 2013 1:34 PM
To: CPCtestimony
Cc: gzipkin@guessrudd.com
Subject: Submitted testimony for HB21 on Feb 6, 2013 14:30PM

HB21

Submitted on: 2/1/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Gary A. Zipkin	Individual	Support	No

Comments: I am a member of the 17th Fairway Villas (Waikoloa Village, Hawaii) HOA. I strongly support this bill. Those of us who regularly and timely pay our HOA dues suffer greatly when condominiums are foreclosed or abandoned and the corresponding HOA dues go unpaid for extended periods of time (often years) or, even worse, when those dues are NEVER paid because a mortgage holder holds and exercises a superior lien. This is particularly true when the HOA in question is comprised (like ours) of only a modest number of condominiums. HOAs need to have meaningful legal recourse when dues are ignored and unpaid and this can reasonably be accomplished if HOA liens are given priority over the liens of foreclosing financial institutions. Those institutions are in a far stronger economic position than the HOA to absorb this expense and it is just that they subordinate their liens to the HOA when the condominium they now own is legally responsible for the unpaid HOA dues. Mahalo for considering my testimony. I would be pleased to answer any questions or provide additional information. Gary A. Zipkin

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kawakami2 - Rise

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 01, 2013 4:30 PM
To: CPCtestimony
Cc: glenhilton2@netscape.net
Subject: Submitted testimony for HB21 on Feb 6, 2013 14:30PM

HB21

Submitted on: 2/1/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Glen Hilton	Individual	Support	No

Comments: As a resident and treasurer of a condominium association in Kona I would ask that you give serious consideration to this bill. The way the current laws are written Associations are at the mercy of banks who sit on foreclosed properties for years or worse yet refuse to foreclose such that the most that can be collected is \$7200. This puts a Tremendous pressure on Association finances and the well being of all the Associations members who pay their Association fees on a timely basis. I ask you to please support and pass HB21. Thank You

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kawakami2 - Rise

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 01, 2013 5:58 PM
To: CPCtestimony
Cc: briwalk5@aol.com
Subject: Submitted testimony for HB21 on Feb 6, 2013 14:30PM

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HB21

Submitted on: 2/1/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
BK Walker	Individual	Support	No

Comments: Please pass HB21 to provide relief of condominium owners from having to carry the burden of paying fees other peoples' properties in foreclosure and bankruptcy. Currently the law is very unfair making it too costly to own property and pay taxes in Hawaii.

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4460 Nehe Road
Unit 324
Lihue, HI 96766
(808) 823-9695

March 2, 2012

Hon. Ron Kouchi
Senate District 7
Hawaii State Capitol
Room 206
415 South Beretania Street
Honolulu 96813

Re: Delinquent Condominium Maintenance Fees

Dear Senator Kouchi:

I am writing to bring to your attention to a serious flaw in Hawaii law that is causing unfairness and hardship to condominium owners throughout the state. As explained below, HRS 514B-146 should be amended to provide that liens for unpaid condominium association dues are secured by the delinquent owner's unit, regardless of whether the property is subject to a mortgage in foreclosure.

My wife and I own one of the 74 units at Kaha Lani, a condominium complex situated on Kauai's east side, between the Wailua Golf Course and Lydgate Park. Kaha Lani's annual maintenance budget is approximately \$700,000, virtually all of which derives from monthly fees paid by the owners. Until recently, it was rare for any of the owners to fall behind on their assessment payments. Existing law was reasonably tailored to protect the AOA's position in the unusual event of a delinquency. But the recession has halved many units' value and, consequently, several owners

Hon. Ron Kouchi
March 2, 2012
Page Two

stopped paying their assessments.¹ Over the last twelve months, Kaha Lani's AOA has lost approximately \$100,000 revenue, roughly 14% of its annual operating budget due to unpaid assessments.

Hawaii law permits an association to perfect a lien to recover unpaid assessments. The lien is normally paid through escrow when the property is sold.² However, *the law contains an important exception that materially limits the effectiveness of an association's liens*. HRS §514B-146(a)(2) provides that an association's lien for delinquent assessments shall be subordinate to a prior mortgage lien. Subsection (b) provides that a foreclosing mortgagee shall have *no responsibility* for the accruing delinquency.

When a foreclosure is complete, and the bank is able to sell the unit, the property should be security for the entire accrued delinquency. Throughout the pendency of the foreclosure, the property (i.e., the bank's security) has been receiving the benefit of the association's payments for a variety of items, including landscaping and pool maintenance, common-area improvements and repairs, and payments made to vendors for goods and services that benefit the property as a whole. In this sense, *the assessments are the functional equivalent of local real property taxes*, which are used to

¹ In most cases, these circumstances arose with new owners, who purchased at or near the top of the market. Their units are now worth substantially less than their mortgage balance ("underwater"), which has caused some owners to stop paying both their association dues and their mortgages. It is likely that most condominium projects around the state are experiencing similar conditions.

² Before the current recession, unpaid dues usually were symptomatic of an owner's temporary financial adversity. Although the law allows an association to foreclose a lien, it was exceedingly rare for unpaid dues to result in an actual lien foreclosure proceeding. In the pre-recession market, most condominium units had adequate equity, and delinquencies were usually "cured" by the owner. If the lien was not cured, the accrued delinquency would be paid in full through escrow from the proceeds of a conventional sale.

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Page Three

improve and maintain the public commons (e.g., buildings, streets, parks, and libraries). If these taxes are delinquent, the law presents *no* obstacle to the property serving as security for the entire tax delinquency, regardless of whether the property is being sold by an individual owner *or by a bank, as part of, or following, a foreclosure.*

It is clear that the balance struck in the original condominium law—a nonjudicial procedure to deal only with the rare, occasional delinquency—is not a good fit for the realities of the contemporary economy. The law allows an association to claim from *a new purchaser* up to \$7,200 on account of delinquent assessments.³ At the same time, banks are immunized from having any portion of the lien amount charged, through escrow, against the proceeds of a sale. Moreover, the \$7,200 is often not nearly adequate to cover the substantial losses being accrued by the owners' association.⁴ In Kaha Lani's case, for example, the respective delinquencies are: \$41,000⁵; \$14,000; \$30,000; \$16,000, \$11,000; and \$8,000.

None of the foregoing delinquencies is less than the \$7,200 ceiling. It should also be noted that the AOA's hands are completely tied. There are no remedies or "work arounds" an association can use to mitigate these losses. Moreover, all of the affected properties are or were the subject of bankruptcy and/or foreclosure proceedings. These proceedings are rife with delay.⁶ So while the banks "slow walk" the foreclosure process (with no obligation or incentive to contribute to the property's upkeep), the

³ Earlier versions of the law permitted collection of \$1,800. This was later increased to \$3,600.

⁴ Although unit values have dropped significantly, there has been no corresponding reduction of ongoing maintenance costs.

⁵ AOA obtained a California money judgment against the former owner; however, the judgment is not collectible.

⁶ SB 651 changed the rules applying to nonjudicial foreclosures. The legislation was intended to protect homeowners who have defaulted on their financing. However, a side effect is to materially slow down the foreclosure process. The additional delay caused by the new law has severely prejudiced condominium associations. As long as the foreclosure proceedings are pending, an association has no practical means to stanch the loss of badly needed operating funds.

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March 2, 2012
Page Four

assessment meter keeps running. Once the \$7,200 ceiling is reached, the AOA has no practical avenue of recourse. Personal money judgments against tapped-out former owners are rarely worth pursuing. And foreclosing the association's *subordinated* lien would do no more than place the association into the shoes of the displaced "underwater" owner.

The condominium law specifically provides that the uncollected liens are to be spread, as "common expenses," among the other unit owners.⁷ This result may have made practical sense when the assessment amounts were historically much lower and delinquencies were rare. But it hardly seems likely that this allocation of losses was intended to apply to the circumstances currently facing Kaha Lani—an aggregate shortfall of \$120,000--which is continually increasing.

The banks argue it would be unfair to allow full restitution of these delinquencies from the proceeds of an eventual sale (1) because they don't hold title during foreclosure proceedings and, (2) if their exemption is withdrawn, they will stop making condominium loans.

On the first point, I am not suggesting that a foreclosing lender should have *personal liability* for assessments that accrued before the lender takes title. However, the *property* should be fully available as security for the constantly accruing delinquencies. The modern mortgage is essentially a co-ownership between the homeowner and a financial institution. It is those parties—not the owners of the *other units*—who assumed the financial risks and therefore should bear the full losses. The second argument is speculative fear-mongering. This proposed change of the law would establish an equitable allocation of the economic risks. Of course the banks will

Hon. Ron Kouchi
March 2, 2012

⁷ HRS §514-B-146(b).

Page Five

continue to make loans. If they regard the risk of having eventually to pay off a lien as significant, they should spread the *economic risk*—through slightly higher interest rates—among *future* borrowers. The banks should not be permitted to shift the burden onto innocent third parties, i.e., the other owners, who are strangers to the defaulted mortgage.

When a unit is in foreclosure, both the delinquent condominium owner and the bank directly benefit from the continuing maintenance expenditures made every day by a community association. I submit there is no material difference between unpaid real property taxes, which function as a *priority* lien against *any* secured lender, and delinquent liens for association dues, from which banks are exempt. The favorable treatment of banks, as against community associations and the non-defaulting unit owners, furthers no discernable *public* interest and arguably is unconstitutional.

For the reasons discussed above, I urge you to introduce retroactive, emergency legislation that would establish the principle that, as against a mortgagee, a condominium unit is full security for delinquent association dues.

Respectfully submitted,

Nicholas Blonder

cc:

Hon. Derek S. K. Kawakami

Hon. James K. Tokioka

Hon. Cindy Evans

Mr. Pete Sattig

President, Kaha Lani AOA

4460 Nehe Road
Unit 324
Lihue, HI 96766
(808) 823-9695

March 2, 2012

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Senate District 7
Hawaii State Capitol
Room 206
415 South Beretania Street
Honolulu 96813

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Hon. Ron Kouchi
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Page Two

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Hawaii law permits an association to perfect a lien to recover unpaid assessments. The lien is normally paid through escrow when the property is sold.² However, *the law contains an important exception that materially limits the effectiveness of an association's liens*. HRS §514B-146(a)(2) provides that an association's lien for delinquent assessments shall be subordinate to a prior mortgage lien. Subsection (b) provides that a foreclosing mortgagee shall have *no responsibility* for the accruing delinquency.

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² Before the current recession, unpaid dues usually were symptomatic of an owner's temporary financial adversity. Although the law allows an association to foreclose a lien, it was exceedingly rare for unpaid dues to result in an actual lien foreclosure proceeding. In the pre-recession market, most condominium units had adequate equity, and delinquencies were usually "cured" by the owner. If the lien was not cured, the accrued delinquency would be paid in full through escrow from the proceeds of a conventional sale.

Hon. Ron Kouchi
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Page Three

improve and maintain the public commons (e.g., buildings, streets, parks, and libraries). If these taxes are delinquent, the law presents *no* obstacle to the property serving as security for the entire tax delinquency, regardless of whether the property is being sold by an individual owner *or by a bank, as part of, or following, a foreclosure.*

It is clear that the balance struck in the original condominium law—a nonjudicial procedure to deal only with the rare, occasional delinquency—is not a good fit for the realities of the contemporary economy. The law allows an association to claim from *a new purchaser* up to \$7,200 on account of delinquent assessments.³ At the same time, banks are immunized from having any portion of the lien amount charged, through escrow, against the proceeds of a sale. Moreover, the \$7,200 is often not nearly adequate to cover the substantial losses being accrued by the owners' association.⁴ In Kaha Lani's case, for example, the respective delinquencies are: \$41,000⁵; \$14,000; \$30,000; \$16,000, \$11,000; and \$8,000.

None of the foregoing delinquencies is less than the \$7,200 ceiling. It should also be noted that the AOA's hands are completely tied. There are no remedies or "work arounds" an association can use to mitigate these losses. Moreover, all of the affected properties are or were the subject of bankruptcy and/or foreclosure proceedings. These proceedings are rife with delay.⁶ So while the banks "slow walk" the foreclosure process (with no obligation or incentive to contribute to the property's upkeep), the

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March 2, 2012
Page Four

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The banks argue it would be unfair to allow full restitution of these delinquencies from the proceeds of an eventual sale (1) because they don't hold title during foreclosure proceedings and, (2) if their exemption is withdrawn, they will stop making condominium loans.

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March 2, 2012

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Page Five

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Respectfully submitted,

Nicholas Blonder

cc:

Hon. Derek S. K. Kawakami

Hon. James K. Tokioka

Hon. Cindy Evans

Mr. Pete Sattig

President, Kaha Lani AOA

kawakami2 - Rise

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 02, 2013 8:28 AM
To: CPCtestimony
Cc: debi@willisdomain.com
Subject: Submitted testimony for HB21 on Feb 6, 2013 14:30PM

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HB21

Submitted on: 2/2/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Debi Willis	Individual	Support	No

Comments: Given the State's economic reliance on tourism, you need to ensure that condo HOAs do not bear the brunt of property foreclosures. It is not fair that Banks should benefit from property maintenance and not have any responsibility to contribute to that expense.

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kawakami2 - Rise

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 02, 2013 8:50 AM
To: CPCtestimony
Cc: hammt@fwginc.com
Subject: Submitted testimony for HB21 on Feb 6, 2013 14:30PM

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HB21

Submitted on: 2/2/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Thomas Hamm	Individual	Support	No

Comments: My wife and I own one of the 74 units at Kaha Lani, a condominium complex situated on Kauai's east side, between the Wailua Golf Course and Lydgate Park. Kaha Lani's annual maintenance budget is approximately \$700,000, virtually all of which is derived from monthly fees paid by the owners. This past year we were assessed an additional \$ 1,000.00 above and beyond our normal monthly assessments to counteract the losses stemmed from properties in foreclosure that are obviously receiving the advantage of the AOA with overall property upkeep, yet when finally sold, will have no liability to pay the total amount due. This liability should come before the bank with the principle being, that as against a mortgagee, a condominium unit is full security for delinquent association dues. Thank you, Thomas and Catherine Hamm

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From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 02, 2013 9:47 AM
To: CPCtestimony
Cc: bittertruth2000@yahoo.com
Subject: *Submitted testimony for HB21 on Feb 6, 2013 14:30PM*

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HB21

Submitted on: 2/2/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
james roach	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 02, 2013 1:10 PM
To: CPCtestimony
Cc: edtaylor3rd@live.com
Subject: Submitted testimony for HB21 on Feb 6, 2013 14:30PM

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HB21

Submitted on: 2/2/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Edward Taylor	Individual	Support	No

Comments: This legislation will correct a major consumer and citizen protection flaw in Hawaii's foreclosure processes. As the rules exist now, the loan originators have asset recovery rights above the home owner association that has been sustaining the value of the property during the process. Meanwhile, the bank has delayed and postponed foreclosure creating a significant gap in association funding. Recovery of such association dues is essential to a fair and equitable conclusion of the process. Without this change, the lending institutions have little exposure and no incentive to speed the process - which is what the housing and condominium industry needs to recover and begin to responsibly expand anew. Please make this change happen! - Edward Taylor

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From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 02, 2013 5:39 PM
To: CPCtestimony
Cc: harryroffelsen@earthlink.net
Subject: *Submitted testimony for HB21 on Feb 6, 2013 14:30PM*

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HB21

Submitted on: 2/2/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Harry Roffelsen	Individual	Support	No

Comments:

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4460 Nehe Road
Lihue, HI 96766
(808) 381-4920

2/3/13

Hon. Ron Kouchi
Senate District 7
Hawaii State Capitol
Room 206
415 South Beretania Street
Honolulu 96813

Re: Delinquent Condominium Maintenance Fees

Dear Senator Kouchi:

I am writing to bring to your attention to a serious flaw in Hawaii law that is causing unfairness and hardship to condominium owners throughout the state. As explained below, HRS 514B-146 should be amended to provide that liens for unpaid condominium association dues are secured by the delinquent owner's unit, regardless of whether the property is subject to a mortgage in foreclosure.

I own one of the 74 units at Kaha Lani, a condominium complex situated on Kauai's east side, between the Wailua Golf Course and Lydgate Park. Kaha Lani's annual maintenance budget is approximately \$700,000, virtually all of which derives from monthly fees paid by the owners. Until recently, it was rare for any of the owners to fall behind on their assessment payments. Existing law was reasonably tailored to protect the AOA's position in the unusual event of a delinquency. But the recession has halved many units' value and, consequently, several owners

Hon. Ron Kouchi

2/3/12

Page Two

stopped paying their assessments.¹ Over the last twelve months, Kaha Lani's AOA has lost approximately \$100,000 revenue, roughly 14% of its annual operating budget due to unpaid assessments.

Hawaii law permits an association to perfect a lien to recover unpaid assessments. The lien is normally paid through escrow when the property is sold.² However, *the law contains an important exception that materially limits the effectiveness of an association's liens*. HRS §514B-146(a)(2) provides that an association's lien for delinquent assessments shall be subordinate to a prior mortgage lien. Subsection (b) provides that a foreclosing mortgagee shall have *no responsibility* for the accruing delinquency.

When a foreclosure is complete, and the bank is able to sell the unit, the property should be security for the entire accrued delinquency. Throughout the pendency of the foreclosure, the property (i.e., the bank's security) has been receiving the benefit of the association's payments for a variety of items, including landscaping and pool maintenance, common-area improvements and repairs, and payments made to vendors for goods and services that benefit the property as a whole. In this sense, *the assessments are the functional equivalent of local real property taxes*, which are used to

Hon. Ron Kouchi

¹ In most cases, these circumstances arose with new owners, who purchased at or near the top of the market. Their units are now worth substantially less than their mortgage balance ("underwater"), which has caused some owners to stop paying both their association dues and their mortgages. It is likely that most condominium projects around the state are experiencing similar conditions.

² Before the current recession, unpaid dues usually were symptomatic of an owner's temporary financial adversity. Although the law allows an association to foreclose a lien, it was exceedingly rare for unpaid dues to result in an actual lien foreclosure proceeding. In the pre-recession market, most condominium units had adequate equity, and delinquencies were usually "cured" by the owner. If the lien was not cured, the accrued delinquency would be paid in full through escrow from the proceeds of a conventional sale.

2/3/13

Page Three

improve and maintain the public commons (e.g., buildings, streets, parks, and libraries). If these taxes are delinquent, the law presents *no* obstacle to the property serving as security for the entire tax delinquency, regardless of whether the property is being sold by an individual owner *or by a bank, as part of, or following, a foreclosure.*

It is clear that the balance struck in the original condominium law—a nonjudicial procedure to deal only with the rare, occasional delinquency—is not a good fit for the realities of the contemporary economy. The law allows an association to claim from *a new purchaser* up to \$7,200 on account of delinquent assessments.³ At the same time, banks are immunized from having any portion of the lien amount charged, through escrow, against the proceeds of a sale. Moreover, the \$7,200 is often not nearly adequate to cover the substantial losses being accrued by the owners' association.⁴ In Kaha Lani's case, for example, the respective delinquencies are: \$41,000⁵; \$14,000; \$30,000; \$16,000, \$11,000; and \$8,000.

None of the foregoing delinquencies is less than the \$7,200 ceiling. It should also be noted that the AOA's hands are completely tied. There are no remedies or "work arounds" an association can use to mitigate these losses. Moreover, all of the affected properties are or were the subject of bankruptcy and/or foreclosure proceedings. These proceedings are rife with delay.⁶ So while the banks "slow walk" the foreclosure process (with no obligation or incentive to contribute to the property's upkeep), the

Hon. Ron Kouchi

³ Earlier versions of the law permitted collection of \$1,800. This was later increased to \$3,600.

⁴ Although unit values have dropped significantly, there has been no corresponding reduction of ongoing maintenance costs.

⁵ AOA obtained a California money judgment against the former owner; however, the judgment is not collectible.

⁶ SB 651 changed the rules applying to nonjudicial foreclosures. The legislation was intended to protect homeowners who have defaulted on their financing. However, a side effect is to materially slow down the foreclosure process. The additional delay caused by the new law has severely prejudiced condominium associations. As long as the foreclosure proceedings are pending, an association has no practical means to stanch the loss of badly needed operating funds.

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Page Four

assessment meter keeps running. Once the \$7,200 ceiling is reached, the AOA has no practical avenue of recourse. Personal money judgments against tapped-out former owners are rarely worth pursuing. And foreclosing the association's *subordinated* lien would do no more than place the association into the shoes of the displaced "underwater" owner.

The condominium law specifically provides that the uncollected liens are to be spread, as "common expenses," among the other unit owners.⁷ This result may have made practical sense when the assessment amounts were historically much lower and delinquencies were rare. But it hardly seems likely that this allocation of losses was intended to apply to the circumstances currently facing Kaha Lani—an aggregate shortfall of \$120,000--which is continually increasing.

The banks argue it would be unfair to allow full restitution of these delinquencies from the proceeds of an eventual sale (1) because they don't hold title during foreclosure proceedings and, (2) if their exemption is withdrawn, they will stop making condominium loans.

On the first point, I am not suggesting that a foreclosing lender should have *personal liability* for assessments that accrued before the lender takes title. However, the *property* should be fully available as security for the constantly accruing delinquencies. The modern mortgage is essentially a co-ownership between the homeowner and a financial institution. It is those parties—not the owners of the *other units*—who assumed the financial risks and therefore should bear the full losses. The second argument is speculative fear-mongering. This proposed change of the law would establish an equitable allocation of the economic risks. Of course the banks will

Hon. Ron Kouchi
2/3/13
Page Five

⁷ HRS §514-B-146(b).

continue to make loans. If they regard the risk of having eventually to pay off a lien as significant, they should spread the *economic risk*—through slightly higher interest rates—among *future* borrowers. The banks should not be permitted to shift the burden onto innocent third parties, i.e., the other owners, who are strangers to the defaulted mortgage.

When a unit is in foreclosure, both the delinquent condominium owner and the bank directly benefit from the continuing maintenance expenditures made every day by a community association. I submit there is no material difference between unpaid real property taxes, which function as a *priority* lien against *any* secured lender, and delinquent liens for association dues, from which banks are exempt. The favorable treatment of banks, as against community associations and the non-defaulting unit owners, furthers no discernable *public* interest and arguably is unconstitutional.

For the reasons discussed above, I urge you to introduce retroactive, emergency legislation that would establish the principle that, as against a mortgagee, a condominium unit is full security for delinquent association dues.

Respectfully submitted,

Tanya Urcavich, Ph.D.

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From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 03, 2013 6:06 AM
To: CPCtestimony
Cc: orvpas@charter.net
Subject: *Submitted testimony for HB21 on Feb 6, 2013 14:30PM*

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HB21

Submitted on: 2/3/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Orville Paschke	Individual	Support	No

Comments:

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To: CPCtestimony
Cc: DMorris13@hawaii.rr.com
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HB21

Submitted on: 2/3/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Derry Morris	Individual	Support	No

Comments: Please support HB21 giving condominium associations' liens over mortgages. The present situation is an unfair financial hardship to condominium owners in favor of mortgage holders.

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Sent: Monday, February 04, 2013 5:45 AM
To: CPCtestimony
Cc: desraylet@aol.com
Subject: Submitted testimony for HB21 on Feb 6, 2013 14:30PM

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HB21

Submitted on: 2/4/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Letitia Ann Desjardins	Individual	Support	No

Comments: I support HB 21.

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 04, 2013 9:53 AM
To: CPCtestimony
Cc: hhlaw@sisna.com
Subject: Submitted testimony for HB21 on Feb 6, 2013 14:30PM

Follow Up Flag: Follow up
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HB21

Submitted on: 2/4/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
richard henriksen	Individual	Support	No

Comments: This bill is needed because an hoa only has a lien to protect there interest. This interest should have priority over an mortogage. First came the Hoa and next came the Mortgage on the property. This creates a burden on all of the owners in the hoa and they have no other recourse. The mortgage holder is fully aware of the hoa when they give there loan. Please fix this inequity.

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 04, 2013 10:01 AM
To: CPCtestimony
Cc: normhayashi@gmail.com
Subject: Submitted testimony for HB21 on Feb 6, 2013 14:30PM

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HB21

Submitted on: 2/4/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Minoru Hayashi	Individual	Support	No

Comments: My wife Peggy and I purchased our condo on the island of Kauai in early 2009. We have paid our condo fees, our property taxes, and collected and remitted to the state the taxes charged for our rental guests. The banks, on the other hand, have used the current law to avoid paying their fair share of the costs to keep the property up leaving the entire cost to me and other home owners who keep on supporting the system that makes it possible to have a condo in Hawaii. Because of the current status of the law the banks get to enjoy the upkeep of the property without any financial obligation to them. This only encourages them to sit on the property, not foreclosing it and not selling it so they can enjoy the fruits of our labors. This totally unfair treatment only discourages investors both in state and from out of state as the vacant properties become a blight to the entire project. Please do not let this continue by passing HB 21.

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4460 Nehe Road
Unit 206
Lihue, HI 96766
(808) 823-9695

February 4, 2013

Hon. Ron Kouchi
Senate District 7
Hawaii State Capitol
Room 206
415 South Beretania Street
Honolulu 96813

Re: Delinquent Condominium Maintenance Fees

Dear Senator Kouchi:

I want to point out a serious flaw in Hawaii law that is causing unfairness and hardship to condominium owners throughout the state. As explained below, HRS 514B-146 should be amended to provide that liens for unpaid condominium association dues are secured by the delinquent owner's unit, regardless of whether the property is subject to a mortgage in foreclosure.

I own one of the 74 units at Kaha Lani, a condominium complex situated on Kauai's east side, between the Wailua Golf Course and Lydgate Park. Kaha Lani's annual maintenance budget is approximately \$700,000, virtually all of which derives from monthly fees paid by the owners. Until recently, it was rare for any of the owners to fall behind on their assessment payments. Existing law was reasonably tailored to protect the AOA's position in the unusual event of a delinquency. But the recession has halved many units' value and, consequently, several owners

stopped paying their assessments. Over the last twelve months, Kaha Lani's AOA has lost approximately \$120,000 revenue, roughly 14% of its annual operating budget due to unpaid assessments.

The condominium law specifically provides that the uncollected liens are to be spread, as "common expenses," among the other unit owners.¹ This result may have made practical sense when the assessment amounts were historically much lower and delinquencies were rare. But it hardly seems likely that this allocation of losses was intended to apply to the circumstances currently facing Kaha Lani—an aggregate shortfall of \$120,000--which is continually increasing.

When a unit is in foreclosure, both the delinquent condominium owner and the bank directly benefit from the continuing maintenance expenditures made every day by a community association. I submit there is no material difference between unpaid real property taxes, which function as a *priority* lien against *any* secured lender, and delinquent liens for association dues, from which banks are exempt.

For the reasons discussed above, I urge you to introduce retroactive, emergency legislation that would establish the principle that, as against a mortgagee, a condominium unit is full security for delinquent association dues.

Best regards,

Mariel van Tatenhove

kawakami2 - Rise

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 04, 2013 11:30 AM
To: CPCtestimony
Cc: desraylet@aol.com
Subject: Submitted testimony for HB21 on Feb 6, 2013 14:30PM

HB21

Submitted on: 2/4/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Raymond Desjardins	Individual	Support	No

Comments: I support HB 21.

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kawakami2 - Rise

From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 04, 2013 12:22 PM
To: CPCtestimony
Cc: gina.harris@century21.com
Subject: Submitted testimony for HB21 on Feb 6, 2013 14:30PM

HB21

Submitted on: 2/4/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Gina Harris	Individual	Support	No

Comments: In support of HB21: Comments: I am writing to bring to your attention to a serious flaw in Hawaii law that is causing unfairness and hardship to condominium owners throughout the state. HRS 514B-146 should be amended to provide that liens for unpaid condominium association dues are secured by the delinquent owner's unit, regardless of whether the property is subject to a mortgage in foreclosure. Please make banks take responsibility for their financial actions, including paying the fees that everyone else has to pay, and stop giving them special treatment. Please allow Representative Evans bill HB-21 to come before the legislature.

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 04, 2013 1:51 PM
To: CPCtestimony
Cc: rejoyce36@aol.com
Subject: Submitted testimony for HB21 on Feb 6, 2013 14:30PM

HB21

Submitted on: 2/4/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Jerry and Joyce Gilbert	Individual	Support	No

Comments: As owners of #325 at Kaha Lani we support this measure and request that the Legislature set aside the unconstitutional gift to Mortgage Bankers previously passed.

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 04, 2013 2:37 PM
To: CPCtestimony
Cc: liliniko96@aol.com
Subject: Submitted testimony for HB21 on Feb 6, 2013 14:30PM

HB21

Submitted on: 2/4/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Elizabeth Fernandez	Individual	Support	No

Comments: I am writing to bring to your attention a serious flaw in Hawaii law that is causing unfairness and hardship to condominium owners throughout the state. HRS 514B-146 should be amended to provide that liens for unpaid condominium association dues are secured by the delinquent owner's unit, regardless of whether the property is subject to a mortgage in foreclosure. Please make banks take responsibility for their financial actions, including paying the fees that everyone else has to pay, and stop giving them special treatment. Please allow Representative Evans bill HB-21 come before the legislature.

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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 04, 2013 3:20 PM
To: CPCtestimony
Cc: Rsoares@cwo.com
Subject: Submitted testimony for HB21 on Feb 6, 2013 14:30PM

HB21

Submitted on: 2/4/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Carolyn Soares	Individual	Support	No

Comments: Please support this bill. Unpaid Association dues, especially after long foreclosure delays, increase the costs for all homeowners. Our Associations dues, like so many others, include direct costs for water, sewer, and garbage, as well as insurance and maintenance. Thank you for helping !

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888 Mililani Street, 2nd Floor
Honolulu, Hawaii 96813-2918
February 4, 2013

HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
REGARDING HOUSE BILL 21

Hearing Date: WEDNESDAY, February 6, 2013
Time : 2:30 p.m.
Place : Conference Room 325

Chair McKelvey, Vice Chair Kawakami, and Members of the Committees,

My name is John Morris and I am testifying with comments on HB 21. Although I represent many condominiums and other homeowner associations that would benefit from this bill, at least in the short term, I have concerns that the bill, in its present form, might have unintended consequences.

More specifically, the committee should investigate the potential impact of this bill on mortgage lending in Hawaii before making a decision. Certainly, the bill might solve many of the problems condominium and other homeowner associations experience with delinquencies. Nevertheless, it would probably have a negative impact on mortgage lending in Hawaii because it would eliminate the first priority position that most lenders require as a condition of making a loan to fund the purchase of a condominium or other type of home.

More than a decade ago, in 2000, the legislature passed "Act 39", which provided condominium associations with a six-month lien to guarantee recovery for an association in any foreclosure, even if: (i) there was no equity to pay the association from the foreclosure sales proceeds; and (ii) the lender did not get paid in full from the sales proceeds. Act 182 (SLH 2012) provided non-condominium associations with a similar right just last year.

Condominium associations lobbied for act 39 on the basis that a six-month priority lien for associations was accepted and recognized by mortgage lenders and many other states as a balance between the rights of the association and the rights of the lenders making loans for the purchase of condominium units.

Even back then, condominium associations would have preferred a bill like HB 21, giving them full and complete priority over lenders. Nevertheless, associations

TESTIMONY REGARDING HOUSE BILL 21

February 4, 2013

Page 2

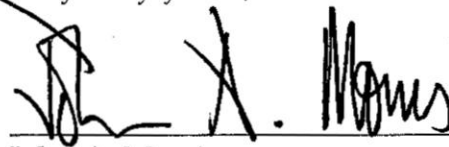
also recognized the reality of the situation: they exist in the overall context of the housing industry, including the requirements of Fannie Mae, Freddie Mac, VA, and FHA, which state that they will accept no more than a six-month priority lien for associations as a condition of buying or guaranteeing mortgages. In addition, condominium associations recognized that more than two dozen states across the United States -- as well as the Uniform Condominium and Uniform Common Interest Ownership Acts -- provide for a six month lien for associations - but no more - for that very same reason.

Certainly, condominiums and other homeowner associations can argue (and have argued) that they are in a very similar position to county governments and should have the same priority as county real property tax liens because associations provide very similar services to their members. Unfortunately, the mortgage lending industry does not agree and the mortgage lending industry drives the purchase and sale of condominium and other residential property by providing loans.

On that basis, if the committee decides to pass HB 21 as is, it should probably research the issue carefully to ensure that it will have no adverse impact on mortgage lending in Hawaii.

Please contact me at 523-0702 if you have any questions. Thank you for this opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read "John A. Morris", written over a horizontal line.

John A. Morris

JAM:alt

G:\C\2013 Testimony HB 21 (02.04.13)

Steve Glanstein
P. O. Box 29213
Honolulu, HI 96820-1613

February 4, 2013

Honorable Rep. Angus L. K. McKelvey, Chairman
Consumer Protection and Commerce Committee
Conference Room 325
State Capitol
415 South Beretania Street
Honolulu, HI 96813

Honorable Rep. Derek S. K. Kawakami, Vice Chair
House Consumer Protection and Commerce Committee
Hawaii State Capitol, Room 325
415 South Beretania Street
Honolulu, HI 96813

RE: Testimony in SUPPORT of HB 21 WITH AMENDMENTS; Hearing Date February 6, 2013 2:30 p.m.; sent via Internet Only

Aloha Chair McKelvey, Vice-Chair Kawakami, and Committee members,

I am on the mainland until after the committee meeting, so cannot attend in person during the hearing date. This written testimony is submitted in support of HB21.

I am an experienced Professional Registered Parliamentarian with about 27 years' experience with condominium and community associations. It has been my custom to provide the community with the benefit of this experience with numerous condominium, cooperative, and planned community associations (over 1,400 meetings).

This information is presented strictly in that capacity and in support of the proposed change HRS §514B, the state law affecting Hawaii's condominium associations.

HB21 proposes to

1. repeal the prioritization of liens for unpaid mortgages over subsequently recorded liens for unpaid condominium association fees; and
2. clarify the obligations of the acquirer of a foreclosed unit under the lien for unpaid association fees.

This bill is good for the condominium association community and will positively affect the majority of condominium homeowners.

The current delinquency situation creates a vicious cycle that damages the condominium and community association consumer.

1. Increased costs due to unpaid delinquent condominium association fees that become partially or full uncollectible
2. These costs passed on to the other condominium or community association owners in the form of higher maintenance fees

3. Higher maintenance fees make it more difficult for future buyers to qualify for loans in the association
4. Higher levels of association delinquencies are disclosed to the proposed lender who then increases the interest rate or qualification requirements to mitigate risk

Mortgage servicing institutions are currently set up for advance collection of mandatory items such as property tax and lease rent. It is common for them to have a lease rent or property tax reserve.

Mortgage servicing institutions may be concerned about their lower priority. However, advance collection of maintenance fees as an add-on to the mortgage will safeguard their interest. It also would ensure that the owner remains current with association obligations.

I suggest that the committee amend HB21 to provide a parallel amendment to HRS §514A-90 in order that the two condominium chapters will be consistent.

HB21 has a double referral, including the House Judiciary Committee. I urge the committee to pass this bill with an amendment to include HRS §514A-90 out of Committee, thus providing an opportunity for the House Judiciary Committee to review any legal issues in order to help the condominium community and the approximately 159,501 condominium owners in 1,715 condominium associations.

Should you wish to discuss further, your call is most welcome. My phone number is 423-6766. Thank you for the opportunity to present information on this subject.

Sincerely,

Steve Glanstein
Professional Registered Parliamentarian

cc: Rep. Karl Rhoads, Chair, House Judiciary Committee
repRhoads@Capitol.Hawaii.gov

kawakami2 - Rise

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 05, 2013 3:42 AM
To: CPCtestimony
Cc: bg8500@comcast.net
Subject: *Submitted testimony for HB21 on Feb 6, 2013 14:30PM*

HB21

Submitted on: 2/5/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Robert Grebe	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Feb 5, 2013

Hon. Ron Kouchi
Senate District 5
Hawaii State Capitol
Room 206
415 South Beretania St
Honolulu 96813

These comments are in support of HB-21 and the letter from Nicholas Blonder, dated March 2. Mr Blonder is an owner at Kaha Lani condo complex on Kauai.

We, George and Shirley Snead, are also owners of a condo unit at the Kaha Lani complex.

As part of the purchase of our condo, we made a commitment to the Kaha Lani Condo Association to pay the AOA fees on a timely basis. We have lived up to that commitment 100%. Yet, we have recently received a "special assessment" because of condo units and their owners who have not lived up to this obligation.

We do not know these people, probably have never met these folks, and likely never will. Nevertheless I do know who has; the financial institutions that mortgaged the property. These organizations have extensive research capabilities that deemed the future condo owners to be a good risk. These same financial institutions also understand how important the condo operating assessments are to the condo associations, therefore there can be little doubt that the financial institutions are 'co-signers' to the condo association bylaws and fees each and everytime they approve a mortgage.

When I co-sign a financial instrument, I take on the obligation should the originating party default. Likewise the financial institutions should be considered liable for ongoing fees when the owner and mortgagee defaults. Hiding behind the law is reprehensible at best.

If the laws are changed so that the financial institutions have no place to hide, maybe, just maybe, their lending decisions will sounder and other owners will not be penalized.

George and Shirley Snead

Aloha All,

The banks are taking unfair advantage of the AOA / associations and the paying owners. Please give Representative Evan's HB a fair hearing.

Mahalo for your time and attention to this important matter.

Diane

kawakami2 - Rise

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 05, 2013 9:28 AM
To: CPCtestimony
Cc: charlotte@spatchen.com
Subject: Submitted testimony for HB21 on Feb 6, 2013 14:30PM

HB21

Submitted on: 2/5/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Charlotte Stokes	Individual	Support	No

Comments: I'm a condo owner on the Big Island. There is no reason for me to subsidize the banking industry. Currently, the banks that own foreclosures need not pay any let alone all condo fees. This is true even if the bank has rented out the unit, making use of sewers, water and garbage pick up-- which are part of my condo fees. This is unfair. Especially at a time when banks are not making loans to qualified home buyers. Banks have shown that their interests and the interests of the public are not same. Please protect us from their bad judgment and unfair practices. Thank you Charlotte Stokes

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kawakami2 - Rise

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 05, 2013 10:33 AM
To: CPCtestimony
Cc: nraysmith@aol.com
Subject: Submitted testimony for HB21 on Feb 6, 2013 14:30PM

HB21

Submitted on: 2/5/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Ray Smith	Individual	Support	No

Comments: I am writing to add my support to amend HRS 514B-146 which contains a serious flaw in Hawaii law causing unfairness and undue hardship to condominium owners throughout the State of Hawaii. HRS 514B-146 should be amended to provide that liens for unpaid condominium association dues are secured by the delinquent owner's unit, regardless of whether the property is subject to a mortgage in foreclosure. As a condominium owner, I am being forced to make up the insufficiencies caused by the banks failure to pay maintenance fees on those properties on which they are foreclosing, even though those very properties are reaping the same benefits that I am. Maintenance of a condominium project does not cease due to a foreclosure. Please force the banks to take responsibility for their financial actions, including paying the fees that everyone else has to pay, and stop giving them special treatment. Please allow Representative Evans bill HB-21 to come before the legislature. Thank you for including my testimony on this very important issue affecting all condominium owners.

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kawakami2 - Rise

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 05, 2013 11:51 AM
To: CPCtestimony
Cc: nancyps11@comcast.net
Subject: Submitted testimony for HB21 on Feb 6, 2013 14:30PM
Attachments: HB 21 testimony.wps

HB21

Submitted on: 2/5/2013

Testimony for CPC on Feb 6, 2013 14:30PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Nancy Slater	Individual	Support	No

Comments:

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